



7400-01-P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Amendment of Privacy Act System of Records

AGENCY: Merit Systems Protection Board

ACTION: Notice of amendment to system of records.

SUMMARY: The Merit Systems Protection Board (MSPB) is issuing public notice of its intent to amend a Government-wide system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a). MSPB/GOVT-1, "Appeals and Case Records," is being amended to reflect that its location is in the Office of the Clerk of the Board. Also, the purpose(s) under the authority for maintenance of the system was amended to reflect that these records may be used to document and adjudicate appeals and other matters arising under the Board's appellate and original jurisdiction; locate appeal documents and files, physical or electronic; provide statistical data for

reports, staff productivity, and other management functions; and provide information to support other statutory functions of the Board, such as studies of the civil service under 5 U.S.C. § 1204(a)(3), and review of regulations of the Office of Personnel Management (OPM) under 5 U.S.C. § 1204(f), and reporting under 5 U.S.C. § 1206. The MSPB is also adding a routine use: release to the public, including via the agency's website following issuance of a decision.

MSPB/GOVT-1**System name:**

Appeals and Case Records.

System location:

Office of the Clerk of the Board, Merit Systems Protection Board (MSPB), Suite 500, 1615 M Street, NW, Washington, DC 20419, and MSPB regional and field offices (see list of office addresses in the Appendix).

Categories of individuals covered by the system:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB or its predecessor agency, or with respect to

whom the Office of Special Counsel (OSC) or another Federal agency has petitioned MSPB concerning any matter over which MSPB has jurisdiction.

b. Current and former employees of State and local governments who have been investigated by OSC and have had an appeal before MSPB concerning possible violation of the Hatch Act.

Categories of records in the system:

a. These records contain information or documents such as briefs, pleadings, motions, exhibits, hearing transcripts, and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the adjudicatory authority of the Board. These records may also contain individual appellants' names, social security numbers, home addresses, veterans' status, race, sex, national origin, and disability status data.

b. This system also includes the Board's case processing system (CPS). The CPS was designed to manage all documents created by the Board during the processing of a case, as well as documents that are received electronically from the parties. At the present time, the CPS includes: a document assembly system to create documents; a document management system to manage and store documents; a case management system to record activities in cases, track the location of case files, and produce

statistical reports on cases; and an electronic filing and electronic publishing system to allow the parties to send and receive case documents electronically.

Note: This system includes records and documents compiled by Federal agencies in processing adverse actions and actions based on unacceptable performance, covered by OPM/GOVT-3, when such actions are appealed to MSPB.

Authority for maintenance of the system:

5 U.S.C. § 1204.

Purpose(s) :

These records may be used to:

- a. Document and adjudicate appeals and other matters arising under the Board's appellate and original jurisdiction;
- b. Locate appeal documents and files, whether physical or electronic;
- c. Provide statistical data for reports, staff productivity, and other management functions; and
- d. Provide information to support other statutory functions of the Board, such as studies of the civil service under 5 U.S.C. § 1204(a)(3), review of regulations of the Office of Personnel Management under 5 U.S.C. § 1204(f), and reporting under

5 U.S.C. § 1206.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information from the record may be disclosed:

- a. To officials of the Equal Employment Opportunity Commission (EEOC) or a Special Panel convened under authority of 5 U.S.C. § 7702 when requested in connection with the performance of their authorized duties;
- b. To officials of the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), EEOC, and OSC in connection with the performance of their authorized duties;
- c. To the Government Accountability Office (GAO) in response to an official inquiry or investigation;
- d. To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual;
- e. To an appropriate Federal or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation;

f. To the Office of Management and Budget (OMB) at any stage in the legislative process in connection with private relief legislation as set forth in OMB Circular No. A-19;

g. To the Department of Justice (DOJ) when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice (DOJ) has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required;

h. In any proceeding before a court or adjudicative body before which the Board is authorized to appear when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required;

i. To any person making a status inquiry regarding a proceeding before MSPB;

j. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. § 2904 and § 2906;

k. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

l. To Federal and State agencies for the purpose of providing MSPB with information concerning MSPB appellants, which

information will be used, absent personal identifiers, in MSPB research projects mandated by 5 U.S.C. § 1204(a)(3);

m. To officials of the United States Court of Appeals for the Federal Circuit in connection with the performance of their judicial functions;

n. To officials of State or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before the Board; and

o. To the public, including to the agency's website following issuance of a decision.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

These records are maintained in file folders and binders and in computer storage media.

Retrievability:

These records are retrieved by the names of the individuals on whom they are maintained and by MSPB docket numbers.

Safeguards:

Access to these records is limited to persons whose official duties require such access. Personal screening is employed to prevent unauthorized disclosure. Automated records in this system are maintained in a secure computer room in a building with restricted access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

Retention and disposal:

Paper records are maintained for up to one year after a final determination by MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred to Regional Federal Records Centers or other appropriate facilities. Paper records are destroyed by the Federal Records Centers when the records are seven years old. Electronic records of the case management system may be maintained indefinitely, or until the Board no longer needs them.

System manager(s) and address:

The Clerk of the Board, Merit Systems Protection Board, Suite 500, 1615 M Street, NW, Washington, DC 20419, and MSPB regional and field offices (see list of office addresses in the Appendix).

Notification procedures:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR Part 1205 regarding such inquiries.

Record access procedures:

Individuals requesting access to their records should contact the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (see list of office addresses in the Appendix). Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR Part 1205.

Contesting record procedures:

Individuals requesting amendment should write to the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (see list of office addresses in the Appendix).

Requests for amendment of records must follow the MSPB Privacy Act regulations at 5 CFR Part 1205.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before MSPB either before or after MSPB has rendered a decision on the appeal.

Record source categories:

The sources of these records are:

- a. The individual to whom the record pertains;
- b. The agency employing the above individual;
- c. The MSPB, OPM, EEOC, OSC; and
- d. Other individuals or organizations from whom MSPB has received testimony, affidavits or other documents.

Appendix

Regional and Field Offices of the Merit Systems Protection Board:

- 1. Atlanta Regional Office, Merit Systems Protection Board, 401 W. Peachtree Street, NE, Suite 1050, Atlanta, Georgia 30308

2. Central Regional Office, Merit Systems Protection Board, 230
South Dearborn Street, 31st Floor, Chicago, Illinois 60604

3. Dallas Regional Office, Merit Systems Protection Board, 1100
Commerce Street, Room 620, Dallas, Texas 75242

4. Denver Field Office, Merit Systems Protection Board, 165
South Union Blvd., Suite 318, Lakewood, Colorado 80228

5. New York Field Office, Merit Systems Protection Board, 26
Federal Plaza, Room 3137-A, New York, New York 10278

6. Northeastern Regional Office, Merit Systems Protection Board,
1601 Market Street, Suite 1700, Philadelphia, Pennsylvania 19103

7. Western Regional Office, Merit Systems Protection Board, 201
Mission Street, Suite 2310, San Francisco, California 94105

8. Washington, DC Regional Office, Merit Systems Protection
Board, 1800 Diagonal Road, Suite 205, Alexandria, VA 22314

DATES: Comments on this amendment must be received by the Clerk
of the Board on or before [insert date 30 days from date of
publication in the Federal Register]. (The Privacy Act, at 5

U.S.C. 552a(e)(11), requires that the public be provided a 30-day period in which to comment on an agency's intended use of information in a system of records. Appendix I to Office of Management and Budget (OMB) Circular A-130 requires an additional 10-day period--for a total of 40 days--in which to make such comments). The amended system of records will be effective, as proposed, at the end of the comment period unless the Board determines, upon review of the comments received, that changes should be made. In that event, the Board will publish a revised notice in the Federal Register.

ADDRESSES: Submit comments to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, Suite 500, 1615 M St., NW, Washington, DC 20419. Comments may be submitted by regular mail to this address, by facsimile to (202) 653-7130, or by e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: William Spencer, Clerk of the Board, at (202) 653-7200.

William D. Spencer

Clerk of the Board

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